

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

VERIZON MARYLAND INC., Plaintiff vs. MONTGOMERY COUNTY, MARYLAND, Defendant.	Civil No.: MJG 06 CV 1663
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MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, Verizon Maryland Inc. (“Verizon”), by its undersigned attorneys, pursuant to Federal Rule of Civil Procedure 56, hereby moves this Court for the entry of Partial Summary Judgment with respect to Counts 1 through 9 and 16 through 18 of its Complaint for Declaratory and Injunctive Relief. In support of this motion, and as more fully explained in its accompanying memorandum of law, Verizon states as follows:

1. Defendant Montgomery County, Maryland (the “County”), through the adoption and implementation of the cable ordinance found at Chapter 8A of the Montgomery County Code (the “Ordinance”), pervasively regulates cable operators located in the County. The Ordinance provides that no entity may provide cable service in the County without first obtaining permission from the County in the form of a cable franchise.
2. The Ordinance vests County officials with sweeping discretion to decide whether to grant or withhold a cable franchise, what conditions to attach to a

franchise, what application-related fees to charge a cable franchise applicant, and when to issue a decision on a request to provide cable service.

3. The County claims a right under the Ordinance to, among other things: (i) regulate the provision of telecommunications services by cable providers; (ii) require that cable providers agree to cede ownership of their telecommunications network if it is used to provide cable service; (iii) regulate the provision of broadband Internet access services by cable providers; (iv) require that cable providers pay a 5% franchise fee on revenues from telecommunications and broadband Internet access services; (v) regulate cable providers' telecommunications facilities if those facilities are also used to provide cable service; (vi) require advance County approval of certain communications sent to customers; and (vii) require that cable providers submit to binding arbitration over disputes regarding the compensation paid to the cable provider for the takeover of its network.

4. Acting under color of the Ordinance, County officials also have demanded that Verizon: (i) pay a "franchise acceptance fee" encompassing all of the County's attorneys' fees, consulting costs, and other expenses associated with reviewing Verizon's franchise request; (ii) agree to provide free cable service and facilities to public and non-profit buildings throughout the County; and (iii) provide 100 wireless "hot spots" or their cash equivalent.

5. The Ordinance's franchise review and acceptance scheme, on its face, violates the First Amendment to the United States Constitution by vesting County officials with broad discretion over the award of cable franchises.

6. By attempting to regulate the provision of telecommunications services, the Ordinance, on its face, violates and is preempted by the federal Communications Act of 1934.

7. By requiring cable providers to cede ownership of their telecommunications networks, the Ordinance, on its face, violates and is preempted by the federal Communications Act of 1934.

8. By attempting to regulate the provision of broadband Internet access services, the Ordinance and its implementing regulations, on their faces, violate and are preempted by the federal Communications Act of 1934.

9. By providing for the collection of franchise fees derived from revenues from non-cable services, the Ordinance, on its face, violates and is preempted by the federal Communications Act of 1934.

10. By attempting to regulate telecommunications facilities, the Ordinance and its implementing regulations, on their faces, violate and are preempted by the federal Communications Act of 1934.

11. The Ordinance violates and is preempted by Maryland Code Annotated, Public Utilities Companies Article §§ 2-113 *et seq.*, which expressly grants to the Maryland Public Service Commission the authority to supervise and regulate public service companies, including Verizon.

12. By requiring cable providers to submit certain customer communications to the County for its advance approval, the Ordinance, on its face, violates the First Amendment to the United States Constitution.

13. By requiring cable providers to submit to binding arbitration over disputes regarding the compensation paid to the cable provider for the takeover of its network, the Ordinance, on its face, violates Article III, Section 40 of the Maryland Constitution, which guarantees the right to a jury determination of just compensation.

14. The County's decision to require Verizon to pay fees in excess of 5% of its gross revenues derived from the provision of cable service violates and is preempted by the federal Communications Act of 1934.

15. The County's decision to require Verizon to provide free cable service and facilities violates and is preempted by the federal Communications Act of 1934.

16. The County's decision to require Verizon to provide free wireless "hot spots" or their cash equivalent violates and is preempted by the federal Communications Act of 1934.

17. There is no genuine issue of material fact regarding any of the above claims.

18. Verizon is thus entitled to judgment as a matter of law on all of these claims.

19. For the reasons set forth in this motion and the accompanying Plaintiff's Memorandum in Support of Its Motion for Partial Summary Judgment, the Court should enter an order declaring invalid and preempted those sections of the Ordinance and regulations specified in the proposed order submitted herewith, and declaring invalid and preempted requirements that the County has imposed on Verizon.

WHEREFORE, Plaintiff Verizon respectfully requests that the Court enter an Order in the form of the proposed order submitted to the Court together with this motion.

Respectfully submitted,

DATED: July 20, 2006

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July, 2006, a copy of the foregoing **Motion for Partial Summary Judgment** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/

Kirsten M. Eriksson, Esquire (Bar No. 26884)